

Public Entities Responsibilities under Title II – Services, Programs and Activities

1.1 SUBTITLE A OF TITLE II

Subtitle A of Title II of the ADA prohibits discrimination on the basis of disability by public entities, both in the provision of services, programs, and activities *and* in employment practices. The following are some of the public entity's key responsibilities under Title II with respect to provision of services, programs, and activities.

1.2 SELF-EVALUATION - 28 CFR §35.105

Title 28-Judicial Administration

CFR-Code of Federal Regulations

Part 35–Nondiscrimination on the Basis of Disability in State and Local Government Services

Subpart A-General

- a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices its required, the public entity shall proceed to make the necessary modifications.
- b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
- c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspections:
 - 1) A list of interested persons consulted;
 - 2) A description of areas examined and any problems identified; and
 - 3) A description of any modifications made.
- d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section apply only to those policies and practices that were not included in the previous evaluation.

The self-evaluation measures compliance with the ADA's mandate to:

- Eliminate any policies or practices that deny an opportunity for a person to participate simply because of a disability,
- Eliminate any unnecessary eligibility standards or criteria unless they are necessary for the provision of the service, program or activity.
- Make reasonable modifications to policies, practices, and procedures that deny equal access, unless a fundamental alteration in the program would result.

- Ensure effective communication (subject to limitations concerning financial and administrative burden and fundamental alteration of the nature of the program) with people with disabilities, including providing auxiliary aids and services such as oral and sign language interpreters, captioning, and alternate formats such as Braille or large print documents and accessible electronic formats.
- Provide the same protections to people who are associated with a person with a disability.
- Not impose charges on individuals with disabilities to cover the costs of necessary measures, such as interpreters and alternate formats.
- Ensure that any programs carried out by contractors or others on behalf of the City comply with the Act.
- Ensure that people with disabilities are not excluded from programs or activities, or otherwise discriminated against, because of inaccessible facilities. The “program access” provision of Title II requires that an entity operate its programs so that, when viewed “in their entirety,” each is accessible to people with disabilities.
- Ensure that newly constructed or altered facilities meet the Department of Justice’s (DOJ) accessibility standards.
- Remove physical barriers to full participation in programs and activities.
- Provide all activities in the most inclusive setting appropriate to the needs of individuals with disabilities.

1.3 EXISTING FACILITIES – 28 CFR §35.150

Title 28-Judicial Administration

CFR-Code of Federal Regulations

Part 35–Nondiscrimination on the Basis of Disability in State and Local Government Services

Subpart D-Program Accessibility

- a) *General.* A public entity shall operate each service, program or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not-
- 1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities.
 - 2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or
 - 3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.
- b) *Methods (1)* A public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of

new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of §35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

- 2) (i) *Safe Harbor*. Elements that have not been altered in existing facilities on or after March 15, 2012 and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101-19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

(ii) The safe harbor provided in §35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (i.e., elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows—

- (A) Residential facilities dwelling units, sections 233 and 809.
- (B) Amusement rides, sections 234 and 1002; 206.2.9; 216.12.
- (C) Recreational boating facilities, sections 235 and 1003; 206.2.10.
- (D) Exercise machines and equipment, sections 236 and 1004; 206.2.13.
- (E) Fishing piers and platforms, sections 237 and 1005; 206.2.14.
- (F) Golf facilities, sections 238 and 1006; 206.2.15.
- (G) Miniature golf facilities, sections 239 and 1007; 206.2.16.
- (H) Play areas, sections 240 and 1008; 206.2.17.
- (I) Saunas and steam rooms, sections 241 and 612.
- (J) Swimming pools, wading pools, and spas, sections 242 and 1009.
- (K) Shooting facilities with firing positions, sections 243 and 1010.
- (L) Miscellaneous.
 - (1) Team or player seating, section 221.2.1.4.
 - (2) Accessible route to bowling lanes, section 206.2.11.
 - (3) Accessible route in court sports facilities, section 206.2.12.

- 3) Historic preservation programs. In meeting the requirements of §35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—
- i. Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;
 - ii. Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or
 - iii. Adopting other innovative methods.
- 4) Swimming pools, wading pools, and spas. The requirements set forth in sections 242 and 1009 of the 2010 Standards shall not apply until January 31, 2013, if a public entity chooses to make structural changes to existing swimming pools, wading pools, or spas built before March 15, 2012, for the sole purpose of complying with the program accessibility requirements set forth in this section.

- c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.

1.4 TRANSITION PLAN – 28 CFR §35.150(d)

Title 28-Judicial Administration

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Subpart D-Program Accessibility

- d) *Transition plan.*

- 1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.
- 2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.
- 3) The plan shall, at a minimum—
 - i. Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
 - ii. Describe in detail the methods that will be used to make the facilities accessible;
 - iii. Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
 - iv. Indicate the official responsible for implementation of the plan.
- 4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.